**THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 860 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**
**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**VARJANG VIGHA SHAKHARA & 3 - Opponent(s)**

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**Appearance :**
MR KC SHAH APP for Appellant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**and**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 03/07/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)**

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 15-01-2004 by learned Addl. Sessions Judge, Fast Track Court, Jamnagar in Special Criminal Case No. 17 of 2002 acquitting the respondents accused for the offences punishable u/ss 447 and 506(2)read Section 114 of the I.P. Code and under Section 3 (1) (iv) and 3 (1) (x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act").

2. In brief, prosecution case was that complainant Viruben Naran Kabhaibhai was residing at village Raan in Taluka Kalyanpur, District Jamnagar and land bearing Survey No.683 Paiki admeasuring 7 acres and 20 gunthas each was given in "Santhani" to the husband of complainant and her neighbours Punja Budha Harijan and Kara Paba Harijan before about 30 years of filing of the complaint and there was no marking of boundaries of the land. They were cultivating the said land since years and there was

waste land in front of the land i.e. on the western side of their land. The waste land belonged to complainant and her neighbours Punja Budha Harijan and Kara Paba Harijan but they were not aware that said land belonged to them. Before two years of the incident, respondents accused started cultivating the waste land and thereby encroached upon their land. The complainant and her neighbours persuaded them not to encroach upon their land. However, respondents accused did not pay any heed by saying that they have purchased the land from Government. Therefore, complainant and her neighbours got measured the waste land and it was found that said land belonged to them. Therefore, complainant and others cultivated the disputed land but respondents accused removed the crop and grew groundnut in the land. Complainant and her neighbours requested the respondents – accused not to cultivate the land. The elders and leaders of the village also intervened and it was agreed that respondents accused would share half of the crop with complainant. On 9-9-2000 at about 5-00 in the evening, respondents – accused removed the produce from the disputed land.

As complainant demanded her half share, respondents - accused Varjang Vigha got enraged. The other respondents – accused also came there and refused to give half share to complainant and gave abuses and uttered derogatory words referable to her caste and also asked to leave village. As complainant and her neighbours again requested respondents - accused they got enraged and after uttering derogatory words referable to her caste gave threats that they would also take possession of her land. As respondents - accused had earlier made settlement after giving threats, complainant did not inform any one about the same but when she told Bhimshi Deraj who had intervened in settlement, she was informed that respondents – accused were head-strong persons and she should file complaint. Therefore, complaint was lodged on 9-9-2000 before Bhatia Outpost in Kalyanpur Police Station.

3. On the basis of complaint filed by Viruben on 12-9-2001 offence was registered as I -CR No.77 of 2001 at Kalyanpur Police Station for the offences punishable u/s 447,

506(2) read with Section 114 of the I.P. Code and u/s 3(1)(iv) and 3(1)(x) of the Atrocities Act and investigation was started. During course of investigation, statement of witnesses were recorded and accused were arrested.

4. On completion of investigation charge sheet was filed before learned J.M.F.C., at Jamkhambhaliya. As the offence was exclusively triable by Special Court, the case was committed to the Special Court, Jamnagar and it was registered as Special (Atrocity) Case No. 17 of 2002. Learned Special Judge and Addl. Sessions Judge, Jamnagar framed charge at Exh.6 against respondents accused for aforesaid offences. The charge was read over and explained to respondents accused who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge. On completion of recording of evidence, incriminating circumstances appearing against respondents-accused in the evidence were explained to them. The respondents–accused in their further statement recorded u/s 313 of the Criminal Procedure Code denied having

committed the offence and stated that they are innocent and false case is filed against them.

5. After hearing learned A.P.P. for the State and learned advocate for the accused, trial Court found that prosecution failed to prove the charge levelled against the accused and therefore acquitted them for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

6. We have heard learned A.P.P. for the appellant State at length and in great detail

7. In order to prove the ownership of land, prosecution examined Talati-cum-Mantri of village Raan, P.W. 1 Manharlal Mohanlal Kantariya at Exh. 12. According to the witness, land of village Raan bearing Revenue Survey No.683 Paiki admeasuring 7 Acre and 20 Gunthas stands in the name of complainant, Kara Paba and Punja Budha and they belonged to Harijan community which is included in Scheduled Caste declared by Government. The witness produced certified copies of revenue record in respect of the land. In the cross-

examination the witness admitted that he is not aware about internal settlement or contract between the parties. The witness also deposed in the cross-examination that respondent accused Varjang Vigha had filed Regular Civil Suit No. 3 of 2001 before Civil Court, at Khambhaliya against complainant and others in respect of land bearing Survey No.683. The witness also admitted that it cannot be said that whether any one has encroached upon land unless it is measured. The witness also admitted that mention of crop in the revenue record is made on the basis of record but he has not verified the same. In view of this evidence, it clearly emerges that land bearing Survey No.683 paiki of village Raan land admeasuring 7 Acre and 20 Gunthas was given to complainant and others for cultivation as they belonged to Harijan community in 'santhani'. It also appears that there was no marking of boundaries of the land and therefore it is difficult to ascertain that which particular part of land was given to complainant and others for cultivation. It also appears that respondent accused Varjang Vigha had filed civil suit against complainant and others in respect of

possession of the land. Therefore, in our view, it would be difficult to accept that respondents -accused committed criminal trespass over the disputed land allegedly belonging to complainant.

8. The prosecution examined complainant P.W. 2 Viruben Naran at Exh.28. According to the witness, she belonged to “Brahmin” community and land in dispute was in her possession and she cultivated the same. According to her, respondents – accused Varjang Vigha had encroached upon her land. Therefore, it was got measured and it was found that land encroached upon belonged to her, therefore respondents – accused agreed to share half of the produce with her but took away entire crop. According to the witness, respondents – accused used derogatory words referable to her caste and gave threats to drive her out of village. In the cross-examination the witness admitted that she is illiterate and respondents – accused had filed civil suit against her in respect of the land and the suit is still pending. The witness admitted that there is dispute with regard to her share in the crop with

respondents accused and her neighbour Kara Paba has also filed complaint against respondents – accused for encroachment upon the land.

9. The prosecution produced complaint at Exh.33. It appears from the complaint that it was filed at 17-00 hrs. on 9-9-2001 for the incident that took place at 16-00 on 12-2-2000. Therefore, complaint is filed after about one year and seven months of alleged incident.

10. It appears from the complaint that part of land bearing Survey No.683 Paiki was given to the complainant and others but there was no marking of boundaries and there was waste land in front of the said land. It also alleges that the complainant and others were not aware about the same but before about 2 years of filing of the complaint, respondent accused Varjang and his sons started cultivating the waste land and thereby allegedly encroached upon the land. Therefore, the land was got measured and it was found that land which was being cultivated by respondent – accused Varjang

belonged to complainant and others. Therefore, complainant and elders of the village met respondents accused and there was a settlement that respondents accused would share half of produce with complainant. However, on 9.9.2000 they removed the crop and did not give share to complainant. Therefore, the complainant demanded her share but respondents – accused allegedly refused to give share and gave threats and also uttered derogatory words referable to her caste.

11. Now, analysing above evidence, it emerges that there was waste land in front of land bearing Survey No.683 which was given to husband of complainant and others for cultivation but there was no marking of boundaries of the land. A civil suit was also filed in respect of disputed land. It also appears from the evidence that after the land was got measured, when it was found that land belonged to the complainant, there was compromise between complainant and respondents accused and it was agreed that the respondents – accused would share crop with complainant but respondents – accused did not act as per settlement, and there was

dispute with regard to occupation of the land. Therefore, it cannot be said that respondents – accused encroached upon the land which was allegedly in possession of complainant with an intention of taking unauthorised possession and making unauthorised use of the property. As observed earlier civil suit was filed claiming right in the land in question and therefore, in our view, it is difficult to believe that respondents accused committed criminal trespass over the land in question.

12. The prosecution also examined neighbour P.W.3 Punjabhai Budhabhai at Exh.30. According to the witness, out of total land belonging to complainant, respondent accused encroached upon 10 Gunthas of land and also encroached upon his 5 'bighas' land and 5 bighas land of Kara Paba. According to him, as respondents - accused encroached upon the land a representation was made to Dy. Collector and the land was got measured and possession of the land encroached upon was given to the allottees. Since then possession of respective land is with them. The evidence of this witness also indicates that there was

no marking of boundaries of land. The witness also admitted having stated before police that the land was being cultivated by respondents - accused before it was given to them and after it was got measured respondents – accused gave possession of land to them. The evidence of this witness also clearly indicates that the boundaries of land in dispute were not ascertained and it was being cultivated by respondents – accused before it was given to complainant and others but when it was found that land belonged to complainant and others, possession thereof was given to them. Therefore, it is difficulty to accept that respondents – accused committed criminal trespass with an intention to take unauthorised possession and for making unauthorised use of the same. One more fact required to be considered is that according to complainant there was an agreement between complainant and others on one side and respondents – accused on the other side to share crop on the land in question and as respondents – accused allegedly did not act as per the settlement, at the instance of elders of village, complaint was filed. In our view,

when there was dispute in respect of possession of land and as it was pending before Civil Court, it cannot be said that respondents – accused were in unauthorised occupation of the land, more so when possession was returned to the concerned allottees.

13. The prosecution also examined P.W.4 Tapubhai Naranbhai at Exh.31. It appears from the evidence of this witness that there was no marking of boundaries of the land in question but when the land was got measured and it was revealed that particular part of the land bearing Survey No.683 being cultivated by respondents – accused belonged to the complainant and others, possession of that part of land was handed over to concerned persons in presence of Government Officer. It also appears that respondents – accused had cultivated the land and complainant and others demanded share in crop from them but respondents – accused refused to give share and therefore complaint was filed. It appears that complaint was filed only because respondents – accused allegedly refused to give share to complainant and

others. In view of above evidence, it is difficult to believe that respondents – accused committed the offences as alleged by prosecution.

14. The prosecution also examined P.W.5 Bahadursinh Shivubha at Exh.32. The witness recorded complaint Exh.33. The witness admitted that according to complainant, the incident occurred before one year but he did not give any reason for delay caused in filing complaint.

15. The prosecution examined P.W.6 Baldevsinh Narubha Jhala at Exh.34 who registered the offence.

16. The prosecution also examined P.W.7 Himatlal Chimanlal Parmar at Exh.36. The witness recorded statement of the witnesses and drew panchanama of scene of offence, The witness also collected revenue record in respect of the land in question, arrested the accused and filed charge-sheet. The witness admitted that he did not collect revenue record from revenue office but complainant and witnesses produced the same before him.

17. Analysing the evidence, it clearly emerges that complaint is filed after about one year and seven months of the incident. The complainant has not offered any explanation for delay. Therefore, delay is fatal to the prosecution case. Moreover, the land was in possession of the complainant and others and there was no marking of the boundaries of the land. The evidence also indicates that there was waste land in front of land bearing Survey No.683 and complainant and witnesses were also not aware that said land belonged to them but when the land was measured it was found that it belonged to them therefore respondents – accused handed over the same to them. A civil suit was also filed in respect of possession of the disputed land. Therefore, it is difficult to accept that respondents accused committed criminal trespass over the property belonging to complainant and others with an intention to make unauthorised use.

18. As regards threats to cause death or grievous hurt, there is no evidence. P.W.2 did not depose about threats. Even other witnesses

did not depose about accusations of threats. Therefore, in our view, it cannot be said that respondents – accused gave threats to the complainant as alleged by prosecution. Even there is no evidence to indicate that respondents – accused abetted in commission of the offence.

19. As regards the offence punishable under the Atrocities Act, prosecution did not produce any evidence to indicate that complainant belonged to member of scheduled caste. In absence of cogent and reliable documentary evidence to indicate that complainant belonged to scheduled caste, it cannot be said that respondents – accused illegally occupied and cultivated the land allotted to a member of scheduled caste. There is no documentary evidence to indicate that land in question was allotted to complainant and others as they were members of scheduled caste. Similarly, there is no cogent and reliable evidence to indicate that respondents – accused intentionally insulted complainant with an intention to humiliate her as member of scheduled caste in public

within public view. The witnesses have deposed about the derogatory words allegedly uttered by respondents – accused. However, there are contradictions with regard to the same. P.W.2 Viruben deposed that respondents – accused uttered derogatory words to drive out her out of village and Gauriben, Punjabhai and Karabhai were aware about the incident. However, P.W.3 Punjabhai has given different version about derogatory words allegedly used by respondents – accused. Gauriben and Karabhai have not been examined by prosecution. Therefore, it would not be safe to rely upon evidence of these two witnesses to connect respondents – accused with offence punishable under the Atrocities Act.

20. In view of above, the learned trial Judge was justified in recording acquittal and the appeal is required to be dismissed.

21. For the foregoing reasons, in our view, the learned trial Judge was justified in recording acquittal and no interference is warranted in the impugned judgment. Hence,

leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/